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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,563	07/02/2003	Zongwen Liao	T-1239	5482
802	7590	01/24/2006	EXAMINER	
DELLETT & WALTERS P. O. BOX 82788 PORTLAND, OR 97282-0788			SAYALA, CHHAYA D	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/613,563	Applicant(s) LIAO ET AL.	
	Examiner C. SAYALA	Art Unit 1761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-15.
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____



CHHAYA SAYALA
PRIMARY EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): Upon entry, the rejection at paragraph 2 of the Final Office action.

Response to Arguments

Applicant's arguments filed 1/4/2006 have been fully considered but they are not persuasive.

The amendment to claim 1 will not be entered. It is not clear why this amendment was not presented earlier, and where the basis for this amendment can be found in the specification. The condensing of the mixture of ammonium phosphate slurry and the release controlling materials is conducted ***until the water-content rate of the mixture reaches 25-35%***. See the specification at page 3, line 7, page 7, lines 4, 13 and 23.

Pages 6-10 of the response discusses the rejection at paragraph 1 of the Office Action.

The main issues raised are as follows:

1. The preferred range of lignosulfonate is between 0.3-0.7% and all amounts shown by the patent (which is up to 5 wt% lignosulfonate), are not pertinent because such amounts reduce hardness.
2. The lignosulfonate was sprayed on the fertilizer.

In response, as long as the amounts overlap with those of the instant claims, the reference is valid and applicable. Also, there is no correlation shown between hardness and controlled release, either by applicant in his specification, or by some showing such as a reference. See *In re Cole*, 326 F.2d 769, 773, 140 USPQ 230, 233 (CCPA 1964): Attorney's arguments do not take the place of evidence.

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As for the contention that the lignosulfonate was sprayed on the fertilizer, the reference states at col. 8, lines 57+ : "The lignosulfonate is either liquid or solid form may be incorporated in the granulation process *in the reaction tanks*, in the recycled fines, *or directly in the granulators*". Because of such disclosure, applicant's position that the fertilizer and lignosulfonate are not mixed before granulation in Detroit, cannot be agreed with. Page 9 of applicant's response is completely based on his position that the reference only shows spraying the lignosulfonate on the fertilizer granule and not according to the steps of mixing the fertilizer and the lignosulfonate as claimed herein. Since the reference shows an embodiment of combining the fertilizer and lignosulfonate in the granulation tanks itself, then this argument is moot.

Buchholz et al. (US Patent 5360465) will be withdrawn based on applicant's traversal of this rejection. It is recognized that the patent sprays the lignosulfonate after granulating or at the end of the granulation process (col. 4, lines 65-66), and there is no fair suggestion or teaching that this process provides a controlled release fertilizer.

Applicant's traversal of Rohwer is based on the examiner's complete misunderstanding of the disclosure of the publication, according to applicant. See page 13, first full paragraph of the response. To facilitate resolution of this fact that the applicant and the examiner have a separate and different interpretation of the publication, the following is reproduced from that reference with emphasis to show what has been relied on (emphasis added):

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[0021] Also, an application-ready fertilizer may be produced with slight adjustments to the above process. In the slurry/mix step, commercial ammonium phosphate solution (a.k.a "10-34-0 solution") may be added at about 10 weight % of the zeolite. This way, the final fertilizer particles already contain substantial phosphorus-containing cations, and are ready as an active fertilizer for field application.

Claim 8. The method of claims 1, wherein a commercial fertilizer containing, for example, phosphorous cations, may be added to the mixture prior to processing in an amount generally about 10 percent, by weight, of the zeolite component.

Based on this disclosure by this reference, applicant's arguments are not agreed with and the rejection is being maintained for reasons of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.


The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).


C. SAYALA
Primary Examiner
Group 1700.